

Northeast Coastal and Barrier Network FOIA and Sensitive Data Information

This appendix summarizes the laws and policy related to protected information about Park resources and the Freedom of Information Act (FOIA). It also describes the procedures for classifying and managing protected information from Inventory and Monitoring Program projects, as well as the procedures for responding to FOIA requests. Much of the material contained in this section is copied or derived from NPS Director's Order #66: Freedom of Information Act and the Protection of Exempted Information (Drafts 12-4-03 and 4-12-04).

1.1 Summary

The FOIA specifies a process through which all United States Government entities must respond to requests for information by any member of the public. FOIA and National Park Service policy require that NPS staff routinely make available information that is of interest to the public, including data regarding park resources and management. Resource information collected through the Northeast Coastal and Barrier Network, whether by NPS staff or partners, is intended to be available not only to parks but also to the public, and the routine dissemination of resource information is an important component of the Network Inventory and Monitoring Program.

However, information that could result in harm to resources may be withheld from public release. Four resource confidentiality laws and an Executive Order direct the NPS to protect information regarding the nature and location of certain sensitive park resources. One of these laws, the National Parks Omnibus Management Act, states that information that could result in harm to specific natural resources, including endangered or threatened species, may not be released to the public, and that records containing such information are exempted from release through FOIA.

Only a small subset of the information collected through the Inventory and Monitoring Program is likely to be considered protected. Nevertheless, all data sets and associated information from Inventory and Monitoring Program activities, including spatial data such as GIS files, should be assessed to determine sensitivity, and any protected information should be carefully managed to prevent its release. When publishing or posting resource information, or when responding to a FOIA request in collaboration with the regional FOIA officer, Inventory and Monitoring Program staff should try to ensure that only the protected information is withheld and not associated non-sensitive information.

1.2 Definitions Relating to Management of Protected Information

Endangered or threatened National Park System resources. For natural resources, this indicates a species or population that has been formally designated as endangered, threatened, a species of concern, or proposed for such a designation by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service, or a similar designation by an appropriate state agency. A parallel definition exists for cultural resources.

Partners are individuals or entities that enter into cooperative or collaborative relationships with NPS for the purpose of achieving overlapping goals, where at least some goal is held in common by both the partner and the NPS. This relationship is documented through a letter, VIP appointment, general agreement, permit, contract, or some similar written arrangement. Partners can include both private entities and other federal agencies.

Protected information indicates information about a sensitive park resource that must not be released to the public according to any of the four resource confidentiality laws and the Executive Order applicable to NPS.

Principal Investigator in this context means the person primarily responsible for the implementation of an inventory or monitoring project, whether that person is a partner, is affiliated with a partner institution, or is an NPS employee.

Record includes all books, papers, maps, photographs, machine-readable materials, or other documentary materials, regardless of physical form or characteristics. Records are made or received by an agency of the United States Government under federal law or in connection with the transaction of public business and preserved by that agency as evidence of the organization, functions, policies, decisions, procedures, operations, or other activities of the Government, or because of the informational value of the data in them (44 U.S.C. 3301).

Resource confidentiality laws refer specifically National Parks Omnibus Management Act (16 U.S.C. 5937), National Historic Preservation Act (16 U.S.C. 470w-3), Federal Cave Resources Protection Act (16 U.S.C. 4304) and Archaeological Resources Protection Act (16 U.S.C. 470hh).

Sensitive park resource indicates a park resource covered by the resource confidentiality laws that is considered susceptible to significant harm, theft or destruction, and about which information should be protected from public release.

1.3 Legal and Policy Framework for NPS Natural Resources Information Dissemination

1.3.1 Freedom of Information Act, 5 U.S.C. § 552

The Freedom of Information Act of 1966 (FOIA), amended in (1F6) 1996 to provide guidance for electronic information distribution (the amendments are commonly referred to as EFOIA) applies to records that are owned or controlled by a federal agency, regardless of whether or not the federal government created the records. FOIA is a broad disclosure law intended to establish a right for any person to access federal agency records that are not protected from disclosure by exemptions. Under the terms of FOIA, agencies make some non-protected records generally available for inspection and copying in public reading rooms and via the Internet. Other records are provided in response to specific requests through a specified process. The Department of the Interior's revised FOIA regulations (43 CFR Part 2, Subparts A through E [see 67 FR 64527]) and the Department's Freedom of Information Act Handbook (383 DM 15) can be accessed at <http://www.doi.gov/foia/>.

1.3.2 National Parks Omnibus Management Act, Section 207, 16 U.S.C. § 5937

The National Parks Omnibus Management Act (NPOMA) prohibits the release, under FOIA, of information regarding the nature and specific location of certain cultural and natural resources in the National Park System. Information prohibited from release includes the location of endangered or threatened species—specifically maps or narrative descriptions indicating site specific locations. The law also identifies conditions under which the Secretary may release this information.

1.3.3 National Park Service Management Policies

The NPS Management Policies (2001) explain the dual goals of the National Park Service with regard to information on resources—to withhold information that will put particular resources at risk and to expeditiously release information that does not.

1.3.4 Director's Order #66 Freedom of Information Act and the Protection of Exempted Information (Drafts 12-04-03 and 4-12-04)

The final Order will function as a supplement to the Department of the Interior FOIA regulations. It is intended to clarify internal NPS operational questions and responsibilities regarding procedures, signature authority, security requirements, and the relationship of paper and electronic records to FOIA and EFOIA. Also, the final Order will specifically address records concerning the location and nature of specific types of park resources that are prohibited from disclosure by the resource confidentiality laws. The draft of the Order states “In general, any federal agency that holds information about

the nature and specific location of park resources that qualifies as protected information under the provisions of NPOMA must withhold that information from the public unless the Director of the National Park Service or designee determines that its release would:

- 1) further the purposes of the unit of the National Park System in which the resource is located
- 2) not create an unreasonable risk of harm, theft, or destruction of the resource
- 3) be consistent with other applicable laws protecting the resource—the expected Order will be accompanied by Reference Manual 66 which will give more detail (refer also to NPOMA)

1.4 Public Access to Network Inventory and Monitoring Data

According to NPS Management Policies and Inventory and Monitoring Program goals, each Network will make information on park resources readily available. In addition, the (1F6) 1996 amendments to FOIA require that all information that is regularly requested, except exempted records, must be made available to the public via reading rooms and the internet. The five internet portals through which information from Northeast Coastal and Barrier Network projects will be made available to the public are listed in Table 1.1.

Table 1.1 Northeast Coastal and Barrier Network Internal Portals for Projects

Name	Description of Content	For More Information
Northeast Coastal and Barrier Network Web Site	Reports and other information on all Network projects as well as Network parks, operations and staff	http://www1.nature.nps.gov/im/units/ncbn/
NPSpecies	Information on species in the National Parks, including all records generated through the I&M Program	www.nature.nps.gov/im/apps/npspp/
NatureBib	Bibliographic references that refer to National Park System natural resources	http://www.nature.nps.gov/nrbib/index.htm
NR-GIS Metadata and Data Store	Documents, maps, and data sets containing resource information from all sources, and their associated metadata	http://science.nature.nps.gov/nrdata/docs/about.cfm
Biodiversity Data Store	Documents, GIS maps, and data sets that contribute to the knowledge of biodiversity in National Park units	http://science.nature.nps.gov/im/inventory/biology/

Both secure and public interfaces are maintained for each of the databases associated with these portals (the NatureBib interface is in development currently), and the public

will have access to all information in these databases except those records marked as 'sensitive.'

1.5 Classifying and Managing Protected Information

The procedures for classifying protected information and managing information about sensitive park resources can be summarized as follows:

- Network staff (Coordinator, Data Manager, and/or other designated staff) will ensure that all known potentially sensitive park resources are identified.
- Network staff will ensure that investigators working on Network projects understand that (1) all data and associated information must be made available for review by Network staff prior to public release in any format, and (2) that any information classified by the NPS as protected should not be released in any format except as specifically coordinated with the NPS (see section 9.2.5.2.2).
- Network staff will identify all known potentially sensitive park resources to the principal investigator for each project.
- All known references to potentially sensitive park resources that are generated from each project will be identified to the Network by the principal investigator for that project.
- For each project, the Network staff will provide a complete list of all references to potentially sensitive park resources in each park to the park superintendent for review.
- Each superintendent determines which information should be protected.
- The Network staff will ensure that all protected information is properly identified and marked before uploading into Network or National databases, and before archiving the databases.
- Network staff will ensure that all references to protected information are removed or obscured in any reports, publications, maps, or other public forum. Following the standard for FOIA requests, the Network will segregate the non-releasable information and where practical will not withhold associated releasable information.

1.5.1 Classifying Protected Information

The classification of protected natural resource information from Inventory and Monitoring Program activities will be done on a case-by-case, project-by-project basis. According to NPOMA, if the NPS determines that disclosure of information would be harmful, information may be withheld concerning the nature and specific location of:

- endangered, threatened, rare, or commercially valuable National Park System resources
- mineral or paleontologic objects

- objects of cultural patrimony

The Federal Cave Resources Protection Act (16 U.S.C. § 4304) similarly authorizes the withholding of information concerning the specific location of any significant caves.

The Network will work closely with the investigators for each project to ensure that potentially sensitive park resources are identified and that information about these resources is tracked throughout the project. Network staff will be responsible for identifying all potentially sensitive resources to the principal investigator(s) working on each project. The investigators, whether NPS staff or partners, should develop procedures to flag all potentially sensitive resources in any products that come from the project, including documents, maps, databases and metadata. All records and other references to the potentially sensitive resources should be specifically identified by the investigator when submitting any products. Partners should not release any information before consulting with NPS staff to ensure that the information is not classified as protected. See section 1.5.2.2.

Network staff should compile information about potentially sensitive resources from each project and forward it in the context in which it would be made available to the public (report, map, database etc.) to each appropriate park superintendent (or his or her designee). Each superintendent will determine whether or not to protect the information. For inventory reports, monitoring project reports, or other stand-alone documents, this process will be most efficiently conducted as part of the final draft review for each document. For information contained in other formats that will not have a discrete review process, Network staff will be responsible for flagging any potentially sensitive information and forwarding a request to the appropriate Superintendent(s).

The following guidance for determining whether information should be protected is suggested in the draft Director's Order #66 (the final guidance may be contained in the Reference Manual 66):

- 1) Has harm, theft, or destruction occurred to a similar resource on federal, state, or private lands?
- 2) Has harm, theft, or destruction occurred to other types of resources of similar commercial value, cultural importance, rarity, or threatened or endangered status on federal, state, or private lands?
- 3) Is information about locations of the park resource in the park specific enough so that the park resource likely could be found at these locations at predictable times now or in the future?
- 4) Would information about the nature of the park resource that is otherwise not of concern permit finding the resource if the information were available in conjunction with other specific types or classes of information?
- 5) Even where relatively out-dated, is there information that would reveal locations or characteristics of the park resource such that the information could be used to find the park resource as it exists now or is likely to exist in the future?

- 6) Does NPS have the capacity to protect the park resource if the public knows its specific location?

In the Northeast Coastal and Barrier Network, most information that may qualify as protected will pertain to rare species of plants and animals, including federal and state-listed species. The information that may be protected could include the location, density or abundance, or presence/absence of the resources in question. Specific examples are maps, narrative descriptions, or monitoring plot locations indicating site specific locations of species.

Information that is already in the public domain can be released. For instance, the return of condors to the Grand Canyon has been well documented by the press. If parties request site-specific information about where the condors have been seen, this information can be released. However, specific nest site locations must not be released.

1.5.2 Managing Protected Information

1.5.2.1 General Procedures

Any information that a superintendent determines should be protected will be removed by Network staff, or by partners with Network staff guidance, before publication or the posting of documents or other media in which the information is contained. Following the standard for FOIA requests, the Network will segregate the non-releasable information and where practical will not withhold associated releasable information.

The method used to withhold protected information depends on the nature of the particular park resource and the medium in which the information is contained. It is the responsibility of Network staff, with guidance from park superintendent(s), to determine the appropriate measures to withhold protected information. In the Northeast Coastal and Barrier Network, protected information is likely to refer to the presence or absence and location of rare species.

It may be appropriate to generalize location data in order to make an area large enough so that the public will be provided some information without learning the specific location of the park resource. This principle can be applied to text descriptions of locations, to text or coded data located on field data sheets or in databases, to GIS files, or to printed maps. In the case of databases, all references to any resource regarding which information is protected should be deleted or otherwise concealed in any publicly accessible version. For example, when providing location information, cutting off the last digits in UTM coordinates will make the location general enough in some cases. This could apply to metadata files associated with GIS data as well. An option for GIS-based displays or printed maps would be to increase the pixel size to the point that finding the object of interest is not possible.

Four of the databases for natural resource related information from the Inventory and Monitoring Program—NatureBib for bibliographic references, NPSpecies for species records, and the Biodiversity Data Store and NR-GIS Data and Metadata Store for documents, GIS maps, and data sets—are equipped with the capacity to mark protected information when records are being uploaded. All records that are marked ‘sensitive’ upon uploading will only be available through the secure applications. Thus, access to information on sensitive park resources will be limited to NPS staff or partners who have signed a confidentiality agreement and procedures regarding the release of protected information can be provided along with access to the databases. It is critical that the Network implement quality control and quality assurance measures to ensure that anyone uploading records into these databases will know the procedures for identifying and entering protected information.

Precautions should be taken to avoid inadvertent releases of protected information. Examples of inadvertent releases are the use of protected information in the development of NPS interpretive and public information programs or the inclusion of protected information in National Environmental Policy Act documents.

1.5.2.2 Procedures for Working with Partners

Network staff must work with any partners that are collecting or reporting information from Inventory and Monitoring Program projects to ensure that:

- all of the records and other information associated with projects are submitted to the NPS
- protected information is identified as described in section F.5
- protected information is withheld from public release
- the NPS and the partner have a signed agreement including a confidentiality clause
- specific procedures for review of information that may be reported by partners are established (This consultation must occur before the partner releases potentially sensitive information to any outside party, whether as part of a publication, posted to a website, or pursuant to a FOIA request or any other request.)

1.5.2.2.1 Partner Agreements

The rights and responsibilities of the NPS and partners regarding potentially sensitive park resources should be stated clearly in any Cooperative Agreement, contract, Interagency Agreement, VIP agreement, or other written confirmation of a working relationship. Each agreement should address the following:

- Clarification of the ownership of data and associated information—the following text, adapted from guidelines developed by Acadia National

Park, is recommended: “All associated data (including, but not limited to field notes, maps, slides, photographs, charts/graphs, tabular and GIS data with associated metadata) are required to be submitted to the Network annually and are owned by the National Park Service.”

- All known potentially sensitive park resources should be named. Since the agreement itself is a public document only the names of the resources should be provided, not specific information about their distribution or abundance, in case that information should be protected.
- The procedures for the classification of protected information should be summarized, especially with regard to cooperation between the Network staff and the project staff (as described in section F.5.1).
- A requirement for the partner to withhold protected information and to consult with the NPS before releasing any information on sensitive park resources should be stated. Thus, the document should include a confidentiality agreement.

If agreements do not contain specific responsibilities for the NPS and the partner regarding protected information, then Network staff must work with partners to institute the appropriate procedures. Note that Federal ownership of information means that the information is subject to public release through FOIA.

1.6 Responding to FOIA Requests

When a Network or a Network park receives a specific FOIA request for Inventory and Monitoring Program information, they will handle it according to standard Department of the Interior and NPS procedures, following the Department’s Regulations, the Department’s FOIA Handbook, and the NPS Directors Order #66 and Reference Manual 66. General information and web links regarding FOIA are located in section F.3.1. (The NPS Northeast Region’s FOIA Program Officer is currently Annette Sasso, and the Regional FOIA Officer is currently Edie Shean-Hammond.)

The procedures for responding to FOIA requests for Inventory and Monitoring Program-related information can be summarized as follows:

- When a request is received by a park or the Network, it is the responsibility of the NPS official recipient (the superintendent for a park, or the Network Coordinator) to comply with FOIA. Notification of the request is forwarded to the regional FOIA program coordinator and the request is logged into the Electronic FOIA Tracking System.
- The request is ‘perfected’ (finalized) by estimating fees and determining the requestors payment limit or request for payment exemption; from this date the NPS has 20 days to respond.
- The requested records are compiled by the recipient office, noting any records that contain protected information and thus are exempted from

release. The recipient must consult with the NPS solicitor regarding any exempted records.

- When a record contains both exempt and nonexempt material, a reasonable attempt should be made to segregate and release nonexempt information.
- A draft response to the request containing the requested records along with an explanation of any records that have been withheld should be submitted to the Regional FOIA Program Coordinator, then forwarded to the Regional FOIA Officer and finally to the Regional Director for signature and release.

1.6.1 Inquiries for Information and/or Records

Upon receipt of a request, the FOIA Officer will make a determination as to whether it is subject to FOIA (i.e., a request for records) or merely a request for information. If the requester seeks an answer to a specific question, or an explanation of policy, procedures, or a Departmental action, DOI is not required to process the request under FOIA. Nonetheless, the FOIA Officer should refer the request for information to the appropriate office for response in a timely manner.

1.6.2 Exemptions from Release of Records through FOIA

Nine exemptions and three special law enforcement record exclusions permit the withholding of sensitive or confidential information from release through FOIA. Although the NPS does not rely on any particular exemption, the one most likely to be used in the context of park natural resources requires withholding records that are prohibited from disclosure by another statute. Four resource confidentiality laws and one Executive Order direct the NPS to protect information regarding the nature and location of certain sensitive park resources. These include the Federal Cave Resources Protection Act and the National Parks Omnibus Management Act (NPOMA), which requires that information potentially harmful to particular natural resources, including listed endangered or threatened species, be withheld from public release.

In some instances, acknowledgement that a particular resource exists at all in a park may reveal too much information. In such cases, a response that neither confirms nor denies the existence of such records may be appropriate in reply to a FOIA request. Such a reply is known as a Glomar response.

1.6.3 Release of Records through FOIA for Projects with Partners

FOIA dictates that once an agency has shared records with any party outside the federal government without a pre-release agreement, it must make the records available to any

and all other parties who request them. This provision is referred to as the “release to one, release to all” rule.

When published research findings are produced under a grant or other Federal assistance, including funding from the Inventory and Monitoring Program, and the findings are used by a bureau in developing an agency action that has the force and effect of law (e.g., a policy or regulation), the research data related to such findings are considered agency records even if they are in the possession of the recipient.

1.6.3.1 Procedures for Working with Federal Agency Partners

In general, any federal agency that holds information about the nature and specific location of park resources that qualifies as protected information under the provisions of NPOMA must withhold that information from the public unless the Director of the National Park Service or designee determines that its release would:

- 1) further the purposes of the unit of the National Park System
- 2) not create an unreasonable risk of harm, theft, or destruction of the resource
- 3) be consistent with other applicable laws protecting the resource

When another federal agency informs NPS that it has received a FOIA request regarding information that the other agency holds about park resources, NPS first assists the agency in determining whether the requested records fit within the definition of protected information. The agency must withhold the information pending action from the NPS. NPS will ask the agency to forward the FOIA request to the NPS with either: 1) a preliminary recommendation that the information be withheld; 2) a preliminary recommendation that it be released; or 3) a statement that the agency will not be making a recommendation whether the information should be released.

The NPS will make its determination about what information, if any, is to be withheld based on information the NPS receives from the agency, the requester, any other party that it consults, and its own inquiry into whether the information can be released under the provisions of NPOMA.

1.6.3.2 Requests for NPS Records Held by a State Agency or Partner

Before sharing information with state employees, whether from state agencies or state funded universities, NPS must be aware that those state employees may be obligated to release information in their possession to any party requesting it because state freedom of information or sunshine laws require such release. In states with Freedom of Information laws that allow the withholding of certain types of information, it may be possible that state employees would have the authority to enter into contractual agreements with NPS to withhold protected information. NPS must not share protected information with any state employee where state laws require the release of all information in state records.

1.6.3.3 Requests for Information Received by NPS from Non-NPS Entities

The NPS cannot guarantee confidentiality of information received from any non-NPS entity. Once NPS receives information from others, its treatment of the information is governed by FOIA. Such information must be released in response to a FOIA request if it does not qualify as protected information. The NPS must, however, withhold any information it receives that does qualify as protected.